Office-Supreme Court, U.S.
FILED
APR 30 1982
JOHN F. DAVIS, CLERK

No. 920

IN THE

Supreme Court of the United States

CITY CENTER MOTEL, INC.
Appellant,

versus

FLORIDA HOTEL AND RESTAURANT COMMISSION,

Appellee.

APPELLANT'S STATEMENT AS TO JURISDICTION

JOHN H. COTTEN
of
Cotten, Shivers, Gwynn & Daniel
Post Office Box 12
Tallahassee, Florida
Counsel for Appellant.

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FLORIDA HOTEL AND RESTAURANT COMMISSION,

Appellee.

STATEMENT AS TO JURISDICTION

I. INTRODUCTORY PARAGRAPH

Appellant submits the following statement of the basis on which it is contended the Supreme Court of the United States has jurisdiction to review, on appeal, the final judgment of the District Court of Appeal, First District, State of Florida.

II. CITATION TO OPINION BELOW

The opinion of the District Court of Appeal, First District, State of Florida is reported in 134 So.2d 856. A copy of the opinion is attached hereto as Appendix A.

The order of the appellee from which petition for certiorari was taken to said District Court of Appeal is unreported, but a copy of said order is attached hereto as Appendix B.

III. JURISDICTION

(a) The proceeding is an appeal from a final judgment of the said District Court of Appeal upholding the validity of Section 509.201 (2)(a) of the Florida Statutes as against the contention that said statute as construed was violative of the United States Constitution.

(b) The judgment of the District Court of Appeal, First District, State of Florida, was entered on November 21, 1961. Order denying petition for rehearing was entered on December 8, 1961. Notice of Appeal was filed with the District Court of Appeal, First District, State of Florida, on February 28, 1962.

(c) The jurisdiction of the Supreme Court of the United States to hear this appeal rests upon 28 USCA § 1257 (2). The judgment of the District Court of Appeal, First District, State of Florida, is the highest court of the state where decision could be had. Petition for Writ of Certiorari was made from the District Court of Appeal to the Supreme Court of Florida, but said petition was denied. A copy of said order denying same is attached hereto as Appendix C.

(d) The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on Appeal:

Myles Salt Co. v. Iberia & St. M. Drainage Dist. 239 U. S. 478, 36 S. Ct. 204

Fiske v. State of Kansas 274 U. S. 380, 47 S. Ct. 655

IV. THE STATUTE INVOLVED

The statute involved is Section 509.201 (2)(a), Florida Statutes, 1959, which reads as follows:

509.201 Room rates; posting in rooms; advertising; penalties. —

. . . . . .

(2)(a) "No person shall display or cause to be displayed any sign or signs which may be seen from a public highway or street, which sign or signs include in dollars and cents a statement relating to the rates charged at a public lodging establishment, unless such sign or signs include in letters and figures of similar size and prominence the following additional information: the number of apartments or rooms in the establishment and the rates charged for each; whether the rates quoted are for single or multiple occupancy where such fact affects the rate charged; and the dates during which such rates are in effect. The said rates posted in each room of the establishment and with those filed with the hotel and restaurant commissioner as required by subsection (1)."

V. QUESTION PRESENTED

The question presented by this appeal is whether it is a violation of the United States Constitution to require that if a person displays a sign showing rates charged in his public lodging establishment that said sign must also include in letters of the *same* or *equal size and prominence* the following additional information: the number of apartments or rooms in the establishment and the rates charged for each; whether the rates quoted are for single or multiple occupancy where such fact affects the rate charged; and the dates during which such rates are in effect.

VI. STATEMENT OF THE CASE

Appellant is the owner and operator of a motel and in order to advise the public of the accommodations it offers to the public it erected a sign on the motel premises. The sign as erected by appellant reads as follows: "$6 Couple; Single $5.00; 32 Units; Rates Same At All Times; Extra Person $1.00." Other information on the sign is not relevant to the issues herein. The figure "$6" is four feet in height and is forty-three feet from the ground. The letters in the word "Couple" are two feet-nine inches in height. The letters and figures in "Single $5.00" are nineteen inches in height and located thirty-five and one-half feet from the ground. The figures and letters in "32 Units"—Rates Same At All Times—Extra Person $1.00" are seven or nine inches in height and located twenty-six feet from the ground.

The Appellee, hereinafter sometimes referred to as the Commission, held a hearing on the charge that Appellant's sign was in violation of Section 509.201 (2)(a). At the close of the testimony before the Commission the Appellant orally moved the Commission to dismiss the charge on the ground that the statute as construed by the Commission is violative of the Federal Constitution. (TR 9-11) but the Commission refused to dismiss same (TR 11). The Commission ruled that the said statute required that all letters and figures on the sign relating to rates has to be the *same* size and prominence and proceeded to fine Appellant $500 and further ordered it to reconstruct its sign so that said letters and figures were the same size and prominence or its license would be suspended. The pertinent part of the Commission's order reads as follows:

> "IT IS THEREFORE ORDERED that City Center Motel, Inc. for the violation charged in Count 1

of the Notice be and it is hereby fined the sum of Five Hundred ($500.00) Dollars.

IT IS FURTHER ORDERED that City Center Motel, Inc. within ten (10) days from the date of this order reconstruct the sign or signs now appearing outside of and in front of the Motel so that the sign containing any words or figures showing the number of rooms in the licensed establishment and the rates charged for each, whether the rates quoted are for single or multiple occupancy, and the rates quoted are for single or multiple occupancy, and the dates during which such rates are in effect, shall be of the same size and prominence as the sign advertising $6 Couple.

IT IS FURTHER ORDERED that upon the failure to pay said fine and/or to reconstruct the sign or signs as above ordered, within ten (10) days from the date of this order, that the license heretofore issued to City Center Motel, Inc. be and the same is hereby suspended for six (6) months."

The Appellee Commission's order recited in effect that all of the letters and figures on the sign could be read from a distance of 200 feet (TR-2). The Commission's complaint against Appellant was that notwithstanding the fact that all the letters and figures could be read from a distance of 200 feet, that the sign was violative of the statutes because the letters and figures were not of the same size and prominence. (TR-3A)

Pursuant to Section 120.31, Florida Statutes 1961 and Rule 4.5 (c) of the Florida Appellate Rules the Appellant filed petition for writ of certiorari with the District Court of Appeal, First District, State of Florida, from the Order of the Commission.

On page 3 of Appellant's petition for writ of certiorari it stated: (TR-14)

> "Respondent has given an interpretation to Section 509.201 (2)(a) that would make the statute violative of the due process of law and equal protection clauses of the State of Florida and United States Constitutions."

In Appellant's brief filed with the District Court of Appeal, First District, State of Florida, one of its points was Point III (TR-14) which read:

> "Respondent Commission's interpretation of Section 509.201 (2)(a) would make the statute violative of the federal and state constitutions."

This point was argued not only in Appellant's brief, but also in its reply brief (TR 15-16) and in oral argument before the District Court of Appeal.

The District Court of Appeal, First District, State of Florida, in its opinion (TR-7) stated:

> "Petitioner further contends that to interpret and enforce the statute in the manner attempted by the Commissioner would stifle free competition, invade the free enterprise system and violate the rights guaranteed under the Constitutions. We are of the view that the constitutionality of a statute such as the one now under consideration has been laid to rest by the Supreme Court in the Adams case mentioned above."

Notice of Appeal from the judgment of the said District Court of Appeal to the Supreme Court of the United States was filed in said District Court of Appeal on February 28, 1962.

VII. THE QUESTION IS SUBSTANTIAL

The question presented is so substantial as to require plenary consideration with briefs on the merits and oral arguments for their resolution.

The substantial question involved is whether it is a violation of the United States Constitution to require that if a person displays a sign showing rates charged in his public lodging establishment that said sign must also include in letters and figures of *the same* or *equal* size and prominence the following additional information: the number of apartments or rooms in the establishment and the rates charged for each; whether the rates quoted are for single or multiple occupancy where such fact affects the rate charged; and the dates during which such rates are in effect.

The statute reads "similar" but the Commission has construed "similar" to mean "equal" or "the same" and the Commission's order has been upheld by the District Court of Appeal. Since the Supreme Court of the United States must accept the state's construction of a statute, the issue is whether the statute as construed is violative of the Fourteenth Amendment to the United States Constitution.

Is this requirement not a violation of the equal protection and due process of law clauses of the Fourteenth Amendment?

Can a person be deprived without compensation of valuable property rights: his right to advertise and his license to do business because the letters and figures on his outdoor sign are not of equal size and prominence?

There is no question of aesthetics as there was in City of Daytona Beach v. Abdo, Fla. App. 112 So. 2d 398, 118 So. 2d 540.

Does the statute requiring all the letters and figures to be the same have a real, substantial or rational relation to the public safety, health, morals or general welfare?

Does it bear a reasonable relation to the prevention of fraud? The appellee's witnesses admitted the sign told the whole story.

The section of the statute immediately following Section 509.201 (2)(a) is Section 509.201 (2)(b). It concerns publication of advertisements and reads as follows:

> (2)(b) "No person shall publish or cause to be published any advertisement other than those referred to in paragraph (a) hereof which includes in dollars and cents a statement relating to rates charged at a public lodging establishment unless such advertisement shall include in letters and figures immediately adjacent to said rate, whether the rates quoted are for single or multiple occupancy where such fact affects the rates charged. Said advertisement shall also include: the number of apartments or rooms in the establishment at the published rates, the dates during which such rates are in effect and an indication as to whether there are other rates in effect in said establishment. The said rate shall in each instance coincide with the rates posted in such rooms of the establishment and with those filed for these rooms with the Hotel and Restaurant Commission as required by subsection (1). With regard to the advertisements referred to in this paragraph the type size of the required additional information shall be at least one-twelfth of the size of the rate figures advertised or equal to the type size used in the body of the advertisement, whichever is larger."

Section 509.201 (2)(b) provides a 1 to 12 ratio requirement for the newspaper and magazine advertising.

Is there a reasonable basis—a substantial reason—for the requirements of 509.201 (2)(a), requiring all the letters and figures to be the same size? If prohibitions and regulations should be based on substantial reason to be constitutional, does not this statute fail for lack of substantial reason?

All the statutory information is on the sign and the Appellee's witnesses admitted the sign told "the whole story" and all the letters and figures on the sign could be read from a distance of 200 feet, although the largest letters and figures could be read as much as 1600 feet away.

If all the letters and figures can be read as far as 200 feet away and all the required statutory information is given and a travelling motorist can be fully informed before entering the motel, is it not arbitrary and unreasonable to require that all the letters and figures be the same size? A photograph of the sign is included in the transcript of record. (TR-20)

Said statute is a denial of equal protection of the law to the small operator whose budget is limited to advertising his rates on his sign in front of his motel and whose volume in his motel makes him unable to afford the various media of advertising in newspapers, magazines and brochures that are available to the chain and large operators who are not bound by the prohibitions of Section 509.201 (2)(a) because they do not have to use same to get their message across, but can afford to advertise pursuant to Section 509.201 (2)(b). There is no reasonable basis on which Section 509.201 (2)(a) should be allowed to stand. It is arbitrary and discriminatory.

We request the Honorable Court to take judicial notice that a sign has less advertising value when all the letters and figures on it are the same size. The sign maker who testified as an expert stated such a sign would have no advertising value and would be comparable to a newspaper without headlines or without lower captions; that it would be like a scientific paper where everything is the same height. The right of a person to advertise his motel on his own property is a valuable property right which the constitution forbids taking without due process of law. Does not a statute which arbitrarily strait-jackets a person's right to advertise destroy a person's most valuable property right without due process of law and violate his rights guaranteed by the United States Constitution?

We submit that Section 509.201 (2)(a) of the Florida Statutes arbitrarily deprives the Appellant of two most fundamental, natural, inherent and inalienable property rights without due process of law: The right to reasonably advertise its motel on its own property and its license to do business.

The questions involved here are so very substantial that we respectfully request this Honorable Court to take jurisdiction of this case.

Respectfully submitted,

John H. Cotten

JOHN H. COTTEN
of
COTTEN, SHIVERS, GWYNN & DANIEL
Post Office Box 12
Tallahassee, Florida
Counsel for Appellant.

Appendix A

Opinion filed November 21, 1961.

A Petition for Writ of Certiorari from the Florida Hotel and Restaurant Commission.

Cotten, Shivers, Gwynn & Daniel, for Petitioner.
Weldon G. Starry, for Respondent.
WIGGINTON, JUDGE

Petitioner seeks review by certiorari of an order entered by the State Hotel and Restaurant Commissioner finding it guilty of displaying a sign in front of its motel relating to rates charged for accommodations furnished therein contrary to the provisions of the statute applicable to matters of this kind.

The statute in question provides that "No person shall display or cause to be displayed any sign or signs which may be seen from a public highway or street, which sign or signs include in dollars and cents a statement relating to the rates charged at a public lodging establishment unless such sign or signs include in letters and figures of similar size and prominence the following additional information: the number of apartments or rooms in the establishment and the rates charged for each; whether the rates quoted are for single or multiple occupancy where such fact affects the rate charged; and the dates during which such rates are in effect. The said rates shall in each instance coincide with the rates posted in each room of the establishment and with those filed with the hotel and restaurant commissioner as required by subsection (1)".[1]

[1]Sec. 509.201 (2) (a), F.S.

One of the requirements set forth in the foregoing statute provides that signs displayed by operators of public lodging establishments which include in dollars and cents a statement relating to rates charged must also include other required information in letters and figures of similar size and prominence. An interpretation of the words "of similar size and prominence" is the crux of this review.

The evidence taken before the commissioner discloses without conflict that the sign forming the subject of the alleged violation contains the following words and figures "$6 Couple". The figure "$6" measures four feet in height and is located forty-three feet from the ground. The letters in the word "Couple" are two feet nine inches in height. The sign also contains the words and figures "Single $5", which are nineteen inches in height and located thirty-five and one-half feet from the ground. That portion of the sign which reads "32 units. Rates same at all times—extra person $1." is composed of letters and figures either seven or nine inches in height and located twenty-six feet from the ground. A motorist approaching the motel could read a portion but not all of the sign when he reaches a point 1600 feet away. Another portion of the sign may be read by an approaching motorist only when he reaches a distance of not more than 600 feet away. The remainder of the sign is readable only when the motorist reaches a distance not more than 200 feet away.

Based upon the foregoing evidence the Commissioner found that the words and figures appearing on the rate sign displayed by petitioner were in violation of the statute which requires that the rates and other information

be in words and figures of similar size and prominence.

It is petitioner's contention that since the sign complained of contains all the information required by the statute, that it fully complies with the spirit and intent thereof and cannot be held to constitute a violation. It bases this position upon the decision of the Supreme Court rendered in Adams.[2] The Adams decision construed the statute as it then existed and prior to the time it was amended in its present form. In all material respects as concerns the question now under consideration, the provisions of the two statutes are the same. The Adams decision merely held that the statute was not violative of any constitutional provision, and was a legitimate exercise of the police power by the State.

Appellant's contention ignores the fact that the violation of which it is found guilty does not concern a failure to include on the sign all the information required by the statute. The essence of the violation is the failure to so construct the sign as to make all figures and letters appearing thereon of similar size and prominence. It indeed taxes the credulity of this court to urge the contention that letters or figures four feet in height and erected forty-three feet from the ground are of similar size and prominence to other figures and letters seven or nine inches in height and erected twenty-six feet from the ground. This is especially so when the larger figures and letters are readable as far away as 1600 feet, while the small letters and figures are readable at a distance of not more than 200 feet from the sign.

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[2]Adams v. Miami Beach Hotel Association, (Fla. 1955), 77 So. 2d 465.

To support petitioner's contention would require that the court ignore and read out of the statute the salutary provision which requires that all figures and letters appearing on rate signs in front of public lodging establishments shall be of similar size and prominence. It was the prerogative of the legislature to make such requirement, and the court would be guilty of invading the province of the legislature if it attempted to ignore it. In the performance of his duty to enforce the provisions of the statuate now under consideration, the Commissioner acts in a quasi-judicial capacity. His findings of fact are entitled to great weight and should not be reversed unless clearly erroneous, or unless there is no competent substantial evidence to support them.[3]

Petitioner further contends that to interpret and enforce the statute in the manner attempted by the Commissioner would stifle free competition, invade the free enterprise system and violate the rights guaranteed under the Constitutions. We are of the view that the constitutionality of a statute such as the one now under consideration has been laid to rest by the Supreme Court in the Adams case mentioned above.[4]

We have carefully considered the remaining assignments of error, but find them to be without merit.

Certiorari denied.

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[3]United States Casualty Co. v. Maryland Casualty Co., (Fla. 1951), 55 So. 2d 741.

[4]See footnote 2.

CARROLL, DONALD, CHIEF JUDGE, and STURGIS, J., CONCUR.

Appendix B

BEFORE THE STATE HOTEL & RESTAURANT COMMISSION

IN RE: CITY CENTER MOTEL, INC.
2414 Kings Drive
Jacksonville, Florida

ORDER

Pursuant to proper notice, issued and served, a hearing was held before Robert A. Riedel, as State Hotel & Restaurant Commissioner, in the office of the Commissioner in the Carlton Building, Tallahassee, Florida, on July 25, 1961. The Commissioner was represented by Weldon G. Starry, special counsel, and City Center Motel, Inc. was represented by Douglas B. Shivers and Frank C. Vann.

It is the finding of the Commissioner, from the evidence and testimony presented at the hearing, that the alleged violations occurred on or about April 28, 1961; that notice of hearing and rule to show cause was issued on May 9, 1961 setting the matter for hearing on May 17, 1961; that said hearing was stayed by a temporary injunction issued out of the Circuit Court of Leon County, Florida; that an amended notice of hearing was issued on Juy 11, 1961 setting the matter for hearing on July 25, 1961.

I further find from the testimony and evidence presented at the hearing as follows:

1. *As to Count 4 of the Notice*: There was no evidence presented to show any overcharges by the Motel on April 26, 1961. Count 4 of the Notice is therefore dismissed.

2. *As to Count 2 of the Notice*: I find that on April 28, 1961 City Center Motel, Inc. did not maintain or make available for inspection by the Hotel & Restaurant Commission a register for the signature of guests as required by Section 509.101 (2) Florida Statutes, but I further find that on April 28th, 1961 a notice to correct this violation was issued by the Commission giving respondent five (5) days to correct this violation and that said correction was made within said five-day period and is now complying with the law, therefore, Count 2 of the Notice is dismissed.

3. *As to Count 3 of the Notice*: I find that on April 28, 1961 City Center Motel, Inc. did not have on file with the State Hotel & Restaurant Commission a schedule of rates of the rooms in the licensed premises as required by Section 509.201 (1) Florida Statutes, but I further find that on April 28th, 1961 a notice to correct this violation was issued by the Commission giving respondent five (5) days to correct this violation and that said correction was made within said five day period and is now in compliance with law, therefore, Count 3 of the Notice is hereby dismissed.

4. *As to Count 1 of the Notice*: I find that on April 26, 1961 and at the time of this hearing City Center Motel, Inc. failed to display or cause to be displayed a sign or signs which comply with the requirements of Section 509.201 (2)(a) in that there is on display in front of said Motel a sign which reads "$6 Couple"; that the $6 figure is four feet-three inches in height and is forty-three feet from the ground. The letters in the word couple are two feet-nine inches in height, the balance of the signs are not of similar size and prominence as the sign $6 Couple in that the sign which reads "Single $5" is only nineteen inches in height and is thirty-five and one-half feet from

the ground. The sign which reads "32 Units. Rates same at all times—extra person $1.00" has letters and figures nine and seven inches in height and is twenty-six feet from the ground; that the sign which reads "$6 Couple" is visible from an automobile travelling the highway approaching the Motel is visible and readable from a distance of 1600 feet, while the sign which reads "Single $5.00" is readable from a distance of 600 feet and "32 Units. Rates same at all times—extra person $1.00" is readable at a distance of 200 feet.

The Supreme Court has held many times that in statutory construction the words of a statute should be given their ordinary customary meaning.

Webster's International Dictionary defines "similar" as alike, akin, analogous and defines "prominence" as quality, state, or fact of being prominent, manifest, or conspicuous.

So, to give the words of the statute "of similar size and prominence" their ordinary customary meaning, means the signs should be of the same size, and equally conspicuous, prominent or visible.

To say that sign letters nineteen inches high which are ordinarily visible from an automobile travelling toward it at 600 feet are of similar size and prominence as sign letters four feet-three inches which are ordinarily visible under the same conditions a distance of 1600 feet; and to say that sign letters seven and nine inches which are ordinarily visible from an automobile for only 200 feet, is of similar size and prominence as sign letters four feet-three inches which are visible for 1600 feet, is a distortion of the English language.

I, therefore, find that the sign which was in existence in front of the Motel on or about April 26, 1961 and now existing in front of City Center Motel, Inc. and as charged in alleged violation No. 1, does not comply with the requirements of Section 509.201 (2)(a) and is in violation of that section of the statute.

IT IS THEREFORE ORDERED that City Center Motel, Inc. for the violation charged in Count 1 of the Notice, be and it is hereby fined the sum of Five Hundred ($500.00) Dollars.

IT IS FURTHER ORDERED that City Center Motel, Inc. within ten (10) days from the date of this order reconstruct the sign or signs now appearing outside of and in front of the Motel so that the sign containing any words or figures showing the number of rooms in the licensed establishment and the rates charged for each, whether the rates quoted are for single or multiple occupancy, and the rates quoted are for single or multiple occupancy, and the dates during which such rates are in effect, shall be of the same size and prominence as the sign advertising $6 Couple.

IT IS FURTHER ORDERED that upon the failure to pay said fine and/or to reconstruct the sign or signs as above ordered, within ten (10) days from the date of this order, that the license heretofore issued to City Center Motel, Inc. be and the same is hereby suspended for six (6) months.

DONE AND ORDERED at Tallahassee, Florida, this 26th day of July, A.D. 1961.

ROBERT A. RIEDEL,
State Hotel & Restaurant Commissioner.

Appendix C

IN THE SUPREME COURT OF FLORIDA

JANUARY TERM, A.D. 1962

THURSDAY, FEBRUARY 1, 1962

CITY CENTER MOTEL, INC., **

Petitioner, **

vs. **

FLORIDA HOTEL AND RESTAURANT COMMISSION, **

Respondent. **

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the District Court of Appeal of Florida, First District, in said cause bearing date November 21, 1961, and the record having been inspected, it is ordered that said Petition be and the same is hereby denied.

A True Copy

TEST:

/s/ GUYTE P. MCCORD (Seal)
Clerk Supreme Court.